U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31650632

Date: JUN. 18, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish: 1) his eligibility as an individual of extraordinary ability, 2) he seeks to enter the United States to continue work in the area of extraordinary ability, and 3) his entry into the United States will substantially benefit prospectively the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

In 2009, the Petitioner filed Form I-140, Immigrant Petition for Alien Worker, seeking classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement. *See* section 203(b)(2)(B)(i) of the Act. Specifically, the Petitioner indicated in part 6 that he intended to work as a "Self-employed Lawyer" to "seek[] permanent employment in the United States as a self-employed lawyer to practice international trade law (public aspect) specializing in 'Trade Adjustment Assistance." The Director denied the petition, and we subsequently dismissed the Petitioner's appeal and subsequent motion.

In 2010, the Petitioner filed Form I-140, seeking his first classification as an individual of extraordinary ability. Specifically, the Petitioner indicated in part 6 his job title as "Lawyer" and nontechnical job description as "Practice of Law." In addition, the Petitioner stated that he "has formed/incorporated his own legal practice, a professional corporation – 'The Law Office of [Petitioner],' and has established presences in both the State of New York and State of California." The Director denied the petition, and we subsequently dismissed the Petitioner's appeal and 16 motions.

Regarding this petition, filed in 2013, the Petitioner changed his job title for the proposed employment as "Postsecondary Teacher" and provided a nontechnical description of the job as follows: "[t]each postsecondary courses. Includes both be primarily engaged in teaching and do a combination of teaching and research." In addition, the Petitioner submitted a certificate stating that the Petitioner "studied at [redacted] (Undergraduate program of Law/Bachelor's degree of Law) from September 2000 to July 2004." Further, the Petitioner presented evidence relating to him being a candidate for diploma examination at the [redacted] in 2011. The Petitioner did not submit any other evidence or explain how he qualified for the immigrant classification. In response to the Director's request for evidence (RFE), the Petitioner claimed eligibility and provided evidence relating to the following evidentiary criteria: awards (8 C.F.R. § 204.5(h)(3)(i)), memberships (8 C.F.R.§ 204.5(h)(3)(ii)), published material (8 C.F.R.

§ 204.5(h)(3)(iii)), judging (8 C.F.R. § 204.5(h)(3)(iv)); original contributions (8 C.F.R. § 204.5(h)(3)(v)), scholarly articles (8 C.F.R. § 204.5(h)(3)(vi)), leading or critical role (8 C.F.R. § 204.5(h)(3)(viii)), and high salary (8 C.F.R. § 204.5(h)(3)(ix)). Specifically, the Petitioner made the following claims:

- Awards – Approval for the immigrant status under the Quality Migrant Admission Scheme by the Immigration Department of the Hong Kong Special Administrative Region through comparable evidence under 8 C.F.R. § 204.5(h)(4)
- Memberships – Fellows of the American Bar Foundation
- Published Material – Flyer and invitation for the Petitioner's doctoral dissertation public defense session and evidence from the *New York International Chapter News* of the New York State Bar Association
- Judging – Two-time judge for the National Appellate Advocacy Competition
- Original Contributions – Doctoral dissertation
- Scholarly Articles – Articles published by the *New York International Chapter News* of the New York State Bar Association; *Electronically-In-Touch*, an electronic newsletter of the NYSBA Young Lawyers Section; and *Review*, a publication of the American Society of International Law
- Leading or Critical Role – American Bar Association (ABA) Young Lawyers Division liaison
- High Salary – Checks and reimbursement expenses from the ABA. Also claimed eligibility through comparable evidence under 8 C.F.R. § 204.5(h)(4).

The Director determined the Petitioner did not meet any of the regulatory criteria, finding the evidence related to his occupation as a lawyer rather than his claimed field of expertise as a postsecondary teacher. Likewise, the Director concluded the Petitioner did not establish his intent to work as a postsecondary teacher in the United States rather than as a lawyer and subsequently did not show he would substantially benefit prospectively the United States.

On appeal, the Petitioner argues:

> The USCIS Texas Service Center's denial decision was primarily based on the erroneous conclusion of law and fact that the submitted evidence is related to the field of law and not for postsecondary education teachers and thus most of the submitted evidence were not considered, among other things. The USCIS Texas Service Center erroneously rejected seven of the eight regulatory criteria claimed by the petitioner, the rejection of which was solely based on this same erroneous finding.
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> Postsecondary teachers include law teachers, such as professors of law. The submitted evidence is in fact related to and appropriate for the instant petition . . . .
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> More specifically, in accordance with the Standard Occupational Classification system, the category "Postsecondary Teachers" (SOC Code: 25-1000) includes the sub-category "Law Teachers, Postsecondary Teacher" (SOC Code: 25-1112) (Description: "Teach courses in law. Includes both teachers primarily engaged in teaching and those who do a combination of teaching and research.").

. . . .

> Last but not least, given that law teaching is actually a natural development and extension of the petitioner's being a lawyer, the submitted evidence has demonstrated that the petitioner is coming to the United States to continue work in the area of expertise.

The issue here, however, is not whether postsecondary teachers include law teachers, such as professors of law. Rather, the issue is whether the Petitioner has established his eligibility as an individual of extraordinary ability in the field as a postsecondary teacher, whether the Petitioner has demonstrated his intent to continue work as a postsecondary teacher, and whether the Petitioner will substantially benefit prospectively the United States as a postsecondary teacher. As indicated above, with this current petition, the Petitioner initially claimed his intended employment in postsecondary education as a teacher. The statute and regulations require an individual's national or international acclaim to be sustained and that he or she seeks to continue work in the area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a postsecondary teacher of law and a lawyer share knowledge of the field, the two rely on very different sets of basic skills. Thus, teaching postsecondary students and practicing law are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area; *see also Mussarova v. Garland*, 562 F.Supp.3d 837 (C.D. Ca. 2022) (determining that the plaintiff's awards as a water polo player were not awarded as a water polo coach); *Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS*, 131 F.Supp.3d 721 (S.D. Oh. 2015) (concluding that the AAO's reasoning, relevant statutory and regulatory language, and case law was not arbitrary, capricious, or otherwise not in accordance with the law in finding that an Olympic gold medal gymnast must meet the extraordinary ability classification through her achievements as a coach, her intended area of expertise).

While we acknowledge the possibility of an individual's extraordinary claim in more than one field, such as teaching postsecondary students and practicing law, a petitioner, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." *See* 8 C.F.R. § 204.5(h)(5). In this case, the Petitioner claimed his area of expertise as a postsecondary teacher. However, the record contains no evidence relating to his accomplishments, achievements, history, or experience as a teacher, let alone as a postsecondary teacher. Even if we considered his law evidence under the regulatory criteria, the Petitioner did not show how he intends to teach in postsecondary education in the United States.

The regulation at 8 C.F.R. § 204.5(h) states:

> (5) *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments, such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

Here, the Petitioner did not include any letters from prospective employers, evidence of prearranged commitments or contracts, or a statement detailing his plans on how he intends to continue his work in the United States. In fact, in response to the Director's RFE, the Petitioner submitted evidence claiming to "show[] the Petitioner's latest achievements":

- Appointed one of two Co-Chairpersons for the United Nations and International Organizations Committee of the ABA International Law Section
- Organized and hosted the 14th Quinquennial United Nations Congress on Crime Prevention and Criminal Justice
- Authorized to travel to Vienna, Austria through the Protocol Department of the Federal Ministry for European and International Affairs of the Republic of Austria
- Official representative of United States local bar associations and one of two United States bar associations

However, the Petitioner did not show how any of the documentation involves continuing to work as a postsecondary teacher in the United States. Furthermore, as indicated earlier, none of the Petitioner's prior filings made any mention of the Petitioner's past experience in postsecondary teaching. In fact, although he filed multiple motions regarding his first extraordinary petition and while this petition was pending, none of his motions made any mention of him teaching postsecondary students or otherwise involved postsecondary teaching. Again, the Petitioner has not demonstrated that he has any experience in postsecondary teaching. Here, the Petitioner has not established how he intends to continue to work in his area of postsecondary teaching when he has never worked in his purported area of expertise, nor has he shown any interest from any higher education institutions willing to hire him.

For the reasons discussed above, the Petitioner has not accompanied the petition with clear evidence showing how he intends to continue to work in the United States in his claimed area of expertise as a postsecondary teacher. Further analysis of his eligibility as an individual of extraordinary ability through fulfillment of the regulatory criteria and whether he will substantially benefit prospectively the United States would, therefore, serve no meaningful purpose. Accordingly, we reserve these issues.[1]

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings"

III. CONCLUSION

As the Petitioner has not demonstrated his intent to continue to work in his claimed area of expertise, we conclude that he has not established eligibility for classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

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on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).